

REMARKS

In the application claims 7-10 and 13-27 remain pending. Claims 1-6, 11, and 12 have been canceled without prejudice.

In the application the drawings and the specification have been objected to as allegedly failing to show or describe the claimed “wide area network.” In response to the objections, it is respectfully submitted that at least Fig. 15 of the subject application and the related description (para. 0153 for example) show and describe the system exchanging data via the “Internet.” Since the “Internet” is well known example of a “wide area network,” it is respectfully submitted that the drawings and specification show and describe the subject matter claimed. Accordingly, it is respectfully requested that the objections be withdrawn.

The pending claims presently stand rejected under 35 U.S.C. § 103 as being rendered obvious by Daum (U.S. 2003/0046377) as further modified by one or more of Allport (U.S. 6,104,334), Ketcham (U.S. 6,195,589), Kolawa (U.S. 6,236,974), and Amro (U.S. 6,507,762).

The reconsideration of the rejection of the claims is respectfully requested.

As concerns the rejection of the claims under 35 U.S.C. § 103, it is respectfully submitted that, to establish a *prima facie* case of obviousness, all of the claim elements must be expressly or inherently described in the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). To be “inherently” described in a prior art reference the reference “must make clear that the missing descriptive matter is necessarily present in the thing described and that it would be so recognized by persons of ordinary skill.” Inherency “may not be established by probabilities or possibilities.” The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *Continental Can Co. USA v. Monsanto Co.*, 948 F.3d 1264 (Fed. Cir. 1991).

Considering now Daum, it has been acknowledged in the Office Action that Daum fails to expressly disclose the claimed uploading of data that functions to identify the consumer appliance from the hand-held device to a system located remotely from the consumer appliance and using the data that functions to identify the consumer appliance at the remote system to retrieve an electronic document comprising human-readable information in a form for instructing a consumer how to interact with one or more controls of the consumer appliance for the purpose of operating the consumer appliance. Rather, the rejection of the claims is based upon the allegedly “inherent” disclosure of these claim elements within Daum. More particularly, it has been alleged that, “inherently, in order to receive *diagnostic routines* from remote systems 140, 150, where *diagnostic information*<sup>1</sup> stored by appliance type and serial number, the appliance identification information must be uploaded to remote systems 140, 150.” (Office Action on pages 11-12, emphasis added).

In response to this assertion that the claimed subject matter is “inherently” disclosed within Daum, it is respectfully submitted that, while Daum may describe that appliance *diagnosis information* is stored by appliance type and serial number, **nowhere** does Daum disclose that appliance *diagnostic routines* are stored by appliance type and serial number. It is also respectfully submitted that Daum **never** uses the terms “diagnosis information” and “diagnostic routines” interchangeably as is done in the rejection of the claims. Furthermore, it cannot be definitively said that Daum intended the term “diagnostic routine” to be included within the term “diagnosis information” such that the “diagnostic routines” of Daum would also be stored by appliance type and serial number. Instead, a common definition of “diagnosis” precludes any such conclusion from being definitive, i.e., the Daum “diagnosis information” may be nothing more than stored information for an appliance identified by its type and serial number

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<sup>1</sup> Daum uses the term diagnosis information in para. 0021.

which information was obtained as a result of a diagnostic being executed on that appliance. (See Merriam-Webster Online Dictionary).

Rather than “inherently” disclose that which has be asserted within the Office Action, it is respectfully submitted that it is equally likely that the Daum *diagnostic routines* are generic routines that may be uniformly used by the diagnostic interface (110). Nothing from within Daum precludes this possibility. As such, it is equally likely that within Daum there is absolutely no need to specify an appliance type and serial number to thereby cause the downloading of the *diagnostic routines* from the remote server (140) just like there would be no need to specify an appliance type and serial number to thereby cause the downloading of programs, upgrade messages, etc. from the remote server (140). (Para. 0025). Accordingly, since it cannot be said the *diagnostic routines* of Daum are necessarily stored by appliance type and serial number, it likewise cannot be said that Daum makes clear that the missing descriptive matter of uploading and using at the remote server (140) appliance identification information to download diagnostic routines is necessarily present in the thing described and that it would be so recognized by persons of ordinary skill in the art as is required of “inherency.”

It is similarly respectfully submitted that, as concerns the *diagnosis information* that is stored at the remote service center (140) of Daum by appliance type and serial number, **nowhere** does Daum disclose that this *diagnosis information* is downloadable to the diagnostic interface (110) of Daum. Rather, Daum makes it expressly clear that it is programs, diagnostic routines, upgrade messages, and the like that are downloadable from the remote service center (140) to the diagnostic interface (110). Accordingly, since it cannot be said that the *diagnosis information* of Daum is necessarily downloadable to the diagnostic interface (110), it likewise cannot be said that Daum makes clear that the missing descriptive matter of uploading and using at the remote

server (140) appliance identification information to download *diagnosis information* is necessarily present in the thing described and that it would be so recognized by persons of ordinary skill in the art as is required of “inherency.”

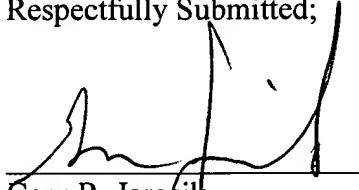
From the foregoing it will be appreciated that Daum cannot be said to disclose, teach, or suggest, either expressly (as acknowledged) or inherently (as demonstrated), those claim elements relied upon in the rejection of the claims. More specifically, it is respectfully submitted that nothing from within Daum can be said to **make clear** that Daum includes the claimed elements of uploading data that functions to identify a consumer appliance from the hand-held device to a server located remotely from the consumer appliance where the server uses the data to retrieve an electronic document comprising human-readable information in a form for instructing a consumer how to interact with one or more controls of the consumer appliance for the purpose of operating the consumer appliance. Therefore, since Daum fails to disclose, teach, or suggest these claimed elements of the invention, and nothing from any of Allport, Ketcham, Kolawa, or Amro can be said to suggest modifying Daum to include these claimed elements of the invention, it is respectfully submitted the rejection of the claims fails to present a *prima facie* case of obviousness under 35 U.S.C. § 103 and must be withdrawn.

Conclusion

It is respectfully submitted that the application is in good and proper form for allowance.

Such action of the part of the Examiner is respectfully requested.

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